

Introduced by Senator CogdillFebruary 3, 2010

An act to amend Section 288 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 940, as introduced, Cogdill. Crime.

Existing law provides that any person who willfully and lewdly commits any lewd or lascivious act, upon or with the body, or any part or member thereof, of a child who is under 14 years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is punishable by imprisonment in the state prison for 3, 6, or 8 years.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 288 of the Penal Code is amended to
2 read:
3 288. (a) Any person who willfully and lewdly commits any
4 lewd or lascivious act, including any of the acts constituting other
5 crimes provided for in Part 1, upon or with the body, or any part
6 or member thereof, of a child who is under ~~the age of 14 years~~ *14*
7 *years of age*, with the intent of arousing, appealing to, or gratifying
8 the lust, passions, or sexual desires of that person or the child, is
9 guilty of a felony and shall be punished by imprisonment in the
10 state prison for three, six, or eight years.

1 (b) (1) Any person who commits an act described in
2 subdivision (a) by use of force, violence, duress, menace, or fear
3 of immediate and unlawful bodily injury on the victim or another
4 person, is guilty of a felony and shall be punished by imprisonment
5 in the state prison for three, six, or eight years.

6 (2) Any person who is a caretaker and commits an act described
7 in subdivision (a) upon a dependent person by use of force,
8 violence, duress, menace, or fear of immediate and unlawful bodily
9 injury on the victim or another person, with the intent described
10 in subdivision (a), is guilty of a felony and shall be punished by
11 imprisonment in the state prison for three, six, or eight years.

12 (c) (1) Any person who commits an act described in
13 subdivision (a) with the intent described in that subdivision, and
14 the victim is a child of 14 or 15 years *of age*, and that person is at
15 least 10 years older than the child, is guilty of a public offense and
16 shall be punished by imprisonment in the state prison for one, two,
17 or three years, or by imprisonment in a county jail for not more
18 than one year. In determining whether the person is at least 10
19 years older than the child, the difference in age shall be measured
20 from the birth date of the person to the birth date of the child.

21 (2) Any person who is a caretaker and commits an act described
22 in subdivision (a) upon a dependent person, with the intent
23 described in subdivision (a), is guilty of a public offense and shall
24 be punished by imprisonment in the state prison for one, two, or
25 three years, or by imprisonment in a county jail for not more than
26 one year.

27 (d) In any arrest or prosecution under this section or Section
28 288.5, the peace officer, district attorney, and the court shall
29 consider the needs of the child victim or dependent person and
30 shall do whatever is necessary, within existing budgetary resources,
31 and constitutionally permissible to prevent psychological harm to
32 the child victim or to prevent psychological harm to the dependent
33 person victim resulting from participation in the court process.

34 (e) Upon the conviction of any person for a violation of
35 subdivision (a) or (b), the court may, in addition to any other
36 penalty or fine imposed, order the defendant to pay an additional
37 fine not to exceed ten thousand dollars (\$10,000). In setting the
38 amount of the fine, the court shall consider any relevant factors,
39 including, but not limited to, the seriousness and gravity of the
40 offense, the circumstances of its commission, whether the

1 defendant derived any economic gain as a result of the crime, and
2 the extent to which the victim suffered economic losses as a result
3 of the crime. Every fine imposed and collected under this section
4 shall be deposited in the Victim-Witness Assistance Fund to be
5 available for appropriation to fund child sexual exploitation and
6 child sexual abuse victim counseling centers and prevention
7 programs pursuant to Section 13837.

8 If the court orders a fine imposed pursuant to this subdivision,
9 the actual administrative cost of collecting that fine, not to exceed
10 2 percent of the total amount paid, may be paid into the general
11 fund of the county treasury for the use and benefit of the county.

12 (f) For purposes of paragraph (2) of subdivision (b) and
13 paragraph (2) of subdivision (c), the following definitions apply:

14 (1) “Caretaker” means an owner, operator, administrator,
15 employee, independent contractor, agent, or volunteer of any of
16 the following public or private facilities when the facilities provide
17 care for elder or dependent persons:

18 (A) Twenty-four hour health facilities, as defined in Sections
19 1250, 1250.2, and 1250.3 of the Health and Safety Code.

20 (B) Clinics.

21 (C) Home health agencies.

22 (D) Adult day health care centers.

23 (E) Secondary schools that serve dependent persons and
24 postsecondary educational institutions that serve dependent persons
25 or elders.

26 (F) Sheltered workshops.

27 (G) Camps.

28 (H) Community care facilities, as defined by Section 1402 of
29 the Health and Safety Code, and residential care facilities for the
30 elderly, as defined in Section 1569.2 of the Health and Safety
31 Code.

32 (I) Respite care facilities.

33 (J) Foster homes.

34 (K) Regional centers for persons with developmental
35 disabilities.

36 (L) A home health agency licensed in accordance with Chapter
37 8 (commencing with Section 1725) of Division 2 of the Health
38 and Safety Code.

39 (M) An agency that supplies in-home supportive services.

40 (N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) “Board and care facilities” means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.

(C) Grooming.

(D) Medication storage.

(E) Medical dispensation.

(F) Money management.

(3) “Dependent person” means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. “Dependent person” includes any person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent person under care.

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